

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**KENNETH EUGENE FOX, SR.**

**PETITIONER**

**V.**

**NO. 3:18-CV-14-DMB-DAS**

**WENDELL BANKS**

**RESPONDENT**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On November 1, 2017, Kenneth Eugene Fox, Sr. filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of Mississippi. Doc. #1. On December 4, 2017, Fox filed an amended petition for a writ of habeas corpus in the same court. Doc. #4. On January 10, 2018, the Southern District Court ordered that the case be transferred to the Northern District of Mississippi pursuant to 28 U.S.C. § 2254. Doc. #10. Eight days later, the case was transferred to this Northern District. Doc. #11. On July 16, 2018, the respondent filed a motion to dismiss. Doc. #17. Fox did not respond to the motion.

On August 16, 2018, United States Magistrate Judge David A. Sanders issued a Report and Recommendation recommending that the respondent's motion to dismiss be granted, Fox's petition for a writ of habeas corpus be dismissed without prejudice, and a certificate of appealability be denied. Doc. #18. To date, no objections to the Report and Recommendation have been filed.

Under 28 U.S.C § 636(b)(1)(C), "[a] judge of the court shall make a de novo determination of those portions of the report ... to which objection is made." "[W]here there is no objection, the Court need only determine whether the report and recommendation is clearly erroneous or contrary to law." *United States v. Alaniz*, 278 F.Supp.3d 944, 948 (S.D. Tex. 2017) (citing *United States v.*

*Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989)). The Court has reviewed the Report and Recommendation and finds that it is neither clearly erroneous nor contrary to law.

Accordingly, the Report and Recommendation [18] is **ADOPTED** as the order of this Court; the motion to dismiss [17] is **GRANTED**; and Fox's petition [1] is **DISMISSED without prejudice**. A certificate of appealability is **DENIED**. A final judgment consistent with this order will be issued separately.

**SO ORDERED**, this 3rd day of January, 2019.

**/s/Debra M. Brown**  
**UNITED STATES DISTRICT JUDGE**